

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Application for Early
Start Services of:

C. J.,

Claimant

vs.

SAN ANDREAS REGIONAL CENTER,

Respondent.

OAH No. N2005100401

(Early Intervention Services Act
Gov. Code, § 95000 et seq.)

DECISION

On November 4, 2005, Administrative Law Judge M. Amanda Behe, State of California Office of Administrative Hearings, heard this matter in Campbell, California.

Claimant C.J. was represented by his mother, Jessica Wang, and his grandmother, Christine Lee, R.N.

The San Andreas Regional Center was represented by Jacques Maitre, M.S.W., District Manager for Special Services.

The matter was submitted on November 4, 2005.

ISSUE

Is claimant eligible for services pursuant to the Early Intervention Services Act?

FACTUAL FINDINGS

1. Claimant was born on March 6, 2003, and is 32 months old. He lives in San Jose with his mother, father, and A.J., his four year-old brother. A.J., a regional center client, is autistic with behavior problems and delayed speech for which he receives speech therapy.

2. Claimant's parents applied for services for claimant from the Early Start program, a joint effort of the regional center and the Santa Clara County Office of Education (COE).

Christine Lee, R.N., claimant's grandmother, testified that the family applied because when claimant's brother (A.J.) was diagnosed with autism he was already over three years old, and they had to wait six months for a COE assessment. The regional center advised the family to have claimant checked before he was three years old. The family is aware that after a child's third birthday entirely different criteria apply for regional center services.

3. On September 29, 2005, claimant was assessed for Early Start services by Howard Ng¹, Ph.D., the Early Start Program psychologist and Intake Coordinator, and Speech Language Pathologist Sandy Hermsmeier. Claimant's parents and claimant were present at the assessment.

4. The October 4, 2005, Intake Team Assessment Report concluded that claimant is not eligible for Early Start services because he is developing within age expectations.

5. On October 5, 2005, claimant's parents were notified of the Intake Team's conclusion that claimant is not eligible for Early Start services. The notice advised that eligibility is based on the presence of significant developmental delays (50 percent in one area or 25 percent in two or more areas), or established medical risk conditions (such as genetic disorders), or a combination of at-risk factors (such as prematurity, brain infection, or prenatal drug exposure) which might lead to a developmental disability unless early intervention services are provided.

The notice advised claimant's parents of the right to appeal the determination of ineligibility, and enclosed the Due Process Mediation and Hearing Request form for an appeal.

6. On October 17, 2005, claimant filed a Due Process Mediation and Hearing Request disputing the eligibility determination. The request stated that at 30 months of age claimant still pronounces most words by only one syllable, such as "ho" for "horse" and "Doa" for "Dora," and that his expressive language development is obviously poorer than classmates of the same age. The request further noted that all the television shows he watches (Blue's Clues, Dora the Explorer, Clifford, Sesame Street) are in English, and English is the only language at home and preschool. The request sought speech therapy for claimant.

7. Progressive Speech Corporation, which provides speech therapy to A.J., conducted a language evaluation of claimant on September 23, 2005. The Rossetti Infant-Toddler Language Scale was completed to determine claimant's level of American English language Development. Claimant was able to identify four body parts, follow directions,

¹ Dr. Ng obtained his Ph.D. in Clinical Psychology, and holds a state Pupil Personnel Services credential. He is an affiliate of the American Psychological Association and the National Association of School Psychologists. He has worked in the area of developmental disabilities since 1978, and has conducted Early Start assessments since the program began in 1994. After 17 years with the regional center he began work at the County Office of Education in 1997. He conducts about 40-60 Early Start assessments per month.

select five familiar objects when requested, understand action words, use intonation in speech, imitate new words, imitate farm animal sounds, and spontaneously say eight to ten words. The report noted his receptive language skills centered at the 18 to 21 month range. His expressive language skills centered at the 12 to 15 month range, an approximately 50-60 percent delay. The report concluded claimant has a moderate developmental language disorder which affects his ability to verbally express himself in and understand the English language.

8. Claimant's grandmother, Christine Lee, works full time as a nurse. She also cares for claimant and his brother on Saturdays and two weekdays from about 5:00 p.m., when she picks them up from school, until 9:00 p.m. She described that claimant "is pretty hyper" and does not understand what she says. The family learned from the older son's language delay that they should speak only English at home, and she considers that claimant has plenty of exposure to English.

Ms. Lee received some education about speech and language disorders in nursing school, and opined that claimant is delayed, with expressive language at the 12-month level.

9. When his parents are at work claimant and his brother attend St. Elizabeth Day School, a private preschool with a standard educational program. His mother considers claimant significantly delayed in expressive language compared to other children in his classroom. She described that claimant almost always uses only one syllable, usually the first syllable, of words. For example, he calls her "Ma" instead of "Mommy." Claimant's speech problems resemble the language used by his older brother, but he does not have similar behavior problems. The parents have not requested speech services from St. Elizabeth Day School.

Claimant's mother disputed the statement in the October 4, 2005, Intake Team Assessment Report that claimant's other grandparents, who cared for claimant for most of last year, "speak entirely Chinese." She testified that those grandparents can speak simple English with him. She acknowledged that those grandparents speak to other family members in Chinese when claimant is in the room. At home claimant has had significant exposure to people who speak Chinese, and exposure to English at preschool.

10. Dr. Ng used the results of various tests as part of his assessment, including the Home Language Survey, which indicated that English is spoken in the home. Claimant passed the Functional Hearing and Functional Vision Assessments. The Battelle Developmental Inventory 2nd Edition (BDI-2), an instrument which measures developmental levels, and the Bzoch-League Receptive-Expressive Emergent Language Scale 2nd Edition (REEL-2), an instrument which measures language skills, were administered. Claimant was vocal and communicative, with speech that was somewhat difficult to understand, and initiated communication often.

The tests indicated no delays in claimant's physical development (gross motor, fine motor, and perceptual motor skills). The tests indicated cognitive development within

normal limits with 20 percent delay in attention and memory, 7 percent delay in reasoning and academic skill, and 23 percent delay in perception and concepts.

In his communication development claimant achieved a BDI-2 age equivalent score of 29 months, about age level, and REEL-2 age equivalent of 30 months, at age level, in receptive language. In expressive language, the area of greatest concern to his parents, claimant was very communicative at intake, answered and asked questions, used many single words although with syllables dropped off, and occasional longer utterances. He achieved a BDI-2 age equivalent score of 29 months, about age level, and REEL-2 age equivalent of 22 months, 27 percent below age level, in expressive language.

In social/personal development claimant was able to maintain good eye contact, responded to praise by smiling, and distinguished strangers from his family. His parents reported adjustment to preschool after a few days, and increased vocabulary in the preceding weeks. In adult interaction he achieved a BDI-2 age equivalent score of 23 months, 23 percent below age level which is within normal limits. In peer interaction he is aware of and plays with other children and A.J., and shares toys, yielding a BDI-2 age equivalent score of 24 months, 20 percent below age level which is within normal limits. In self-concept and social rule he likes to receive parental attention, responds to his name, plans independently, and complies with simple directions and commands. He achieved a BDI-2 age equivalent score of 26 months, 13 percent below age level which is within normal limits.

Dr. Ng concluded that claimant is not eligible for Early Start services because he is developing within age expectations.

11. Dr. Ng testified that his conclusion was not changed by the report by Progressive Speech Corporation. He considers the BDI-2 and REEL-2 are accurate and appropriate measures of claimant's language development.

Dr. Ng persuasively opined that for children below three years of age the concern is whether language acquisition is proceeding in the normal sequence. Articulation problems can be dealt with when the child starts school. Claimant is exposed to English at preschool, and is picking up language fairly quickly. Although claimant uses both clear and unclear words, he has functional and directive communication which establishes that his language development is progressing satisfactorily. In consequence, he does not meet any of the criteria for Early Start eligibility. He does not have a delay of 50 percent or greater in any of the assessed areas, or delay of 25 percent or more in two or more areas.

12. Dr. Ng noted that growing up in a multi-lingual home can affect speech development. Specifically, that situation can slow the acquisition of both languages, and if there is a speech delay it is found in both languages. On the other hand, if parents want bilingual ability early childhood is the best time to expose a child to both languages. There may be some risk for delay in the acquisition of sound, but not for understanding of language.

13. Howard Doi, LMFT, District Manager of the Early Start Program, described that children can be eligible for only regional center services, only COE services, or services from both agencies. A child under the age of three can receive Early Start services if he has 50 percent significant developmental delay in one area or 25 percent in two or more areas. Alternatively, eligibility is found if the child has established medical risk conditions, like genetic disorders, or a combination of at-risk factors, like premature birth, brain infection, or prenatal drug exposure which might lead to a developmental disability. After age three the narrower eligibility standards of the Lanterman Act apply.

Mr. Doi is familiar with the BDI-2 as a standardized assessment tool that is used to establish age equivalent development. REEL-2 is a test instrument specific to language, which relies heavily on parent report. The COE assessment found that claimant is 27 percent below age level on one instrument, and at age level on the other. In his professional experience Mr. Doi has seen such test differences, which are resolved by information from the clinical assessment. Here, claimant is within normal limits in cognitive development, personal development, and other variables. His receptive language is at about age level, and expressive language is between 0 and 27 percent delay. His assessment test results do not make him eligible for Early Start services under any of the relevant criteria.

14. Mr. Doi noted that many factors affect a child's speech, including having an older sibling with speech delays or a second language at home.

Moreover, even the report of Progressive Speech Corporation, which did not include raw or age equivalent scores, noted claimant's receptive and expressive language skills. In the absence of scores or discussion, the conclusion of an approximately 50-60 percent delay in expressive language was not persuasive.

LEGAL CONCLUSIONS

1. The Early Intervention Services Act is found at Government Code section 95000 et seq., and the related regulations at title 17, California Code of Regulations, sections 52000 through 52175. The Act provides that direct services to infants and toddlers shall be provided through the regional center system that was established under the Lanterman Developmental Services Act. (Gov. Code, §§ 95004, subd. (a) and 95014, subd. (b).)

The California Legislature has found that early intervention services "reduce the ultimate costs to our society, by minimizing the need for special education and related services in later school years and by minimizing the likelihood of institutionalization." (Gov. Code, § 95005, subd. (a)(2).) The Legislature recognized that "[t]he earlier intervention is started, the greater is the ultimate cost-effectiveness and the higher is the educational attainment and quality of life achieved by children with disabilities." (*Id.*)

2. Eligibility for Early Start services is based on the presence of significant developmental delays (50 percent in one area or 25 percent in two or more areas), or

established medical risk conditions (such as genetic disorders), or a combination of at-risk factors (such as prematurity, brain infection, or prenatal drug exposure) which might lead to a developmental disability unless early intervention services are provided. The more persuasive report, and the testimony at hearing, established that while claimant has some delays in expressive speech they are not so great that he is eligible for Early Start services.

ORDER

The application for Early Start services is denied.

DATED: _____

M. AMANDA BEHE
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative adjudication decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.